

REGISTER OF ACTIONS

CASE No. 24CV08583Jesus Velez Pastrana, John G. Irwin Jr. vs City of Portland, Joseph Gary
Sumner, John or Jane Doe§
§
§
§
§Case Type: Tort - General
Date Filed: 02/15/2024
Location: Multnomah

PARTY INFORMATION

Defendant City of Portland

Attorneys

Defendant Doe, John or Jane

Defendant Sumner, Joseph Gary

Plaintiff Irwin Jr., John G.

David Wallace
Retained
503 896-6543(W)

Plaintiff Pastrana, Jesus Velez

David Wallace
Retained
503 896-6543(W)

EVENTS & ORDERS OF THE COURT

02/15/2024 OTHER EVENTS AND HEARINGS

Complaint
Negligence - NOT SUBJECT TO MANDATORY ARBITRATION
Created: 02/16/2024 10:59 AM02/15/2024 Service
City of Portland
Created: 02/16/2024 10:59 AM

Unserved

04/03/2024 Complaint - Amended
1st - **Added Defs**

Created: 04/05/2024 7:06 AM

04/03/2024 Service
Sumner, Joseph Gary
Doe, John or Jane
Created: 04/05/2024 7:12 AMUnserved
Unserved

FINANCIAL INFORMATION

Plaintiff Pastrana, Jesus Velez			
Total Financial Assessment			1,178.00
Total Payments and Credits			1,178.00
Balance Due as of 04/08/2024			0.00
02/16/2024 Transaction Assessment			884.00
02/16/2024 xWeb Accessed eFile	Receipt # 2024-106482	Pastrana, Jesus Velez	(884.00)
04/05/2024 Transaction Assessment			294.00
04/05/2024 xWeb Accessed eFile	Receipt # 2024-220148	Pastrana, Jesus Velez	(294.00)

David Wallace, OSB# 170783
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Portland, Oregon 97217
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Jesus Velez Pastrana's Attorney

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

Jesus Velez Pastrana,
v.
Plaintiff,
City of Portland, a municipal
corporation,
Defendant.

Case No.:
COMPLAINT FOR NEGLIGENCE
JURY TRIAL DEMANDED
Prayer: \$6,000,000.00
ORS §21.160(1)(d) - \$884
NOT SUBJECT TO
MANDATORY ARBITRATION

1 Plaintiff demands a jury trial and alleges:

2 1.

3 Defendant City of Portland is and at all times mentioned herein has been
4 a municipal corporation in the State of Oregon.

5 2.

6 Notice of claims were properly provided to the City of Portland within 180
7 days of each incident alleged herein.

8 3.

9 Defendants are state actors acting under color of law.

10 4.

11 Defendants' conduct constituted an unjustified intrusion on Mr.
12 Pastrana's personal safety in violation of his substantive due process rights
13 under the Fourteenth Amendment to the United States Constitution.

14 5.

15 The Defendants affirmatively placed Mr. Pastrana in a position of danger
16 in which he would not have otherwise faced.

17 6.

18 The risk of harm to Mr. Pastrana as alleged herein was substantial,
19 posing a serious risk of injury.

1 7.

2 Despite knowledge of the serious risks, the defendants made a conscious
3 choice to disregard the substantial risk of serious harm.

4 8.

5 The defendants acted with deliberate indifference to a known or obvious
6 danger in subjecting Mr. Pastrana to such danger.

7 9.

8 The defendants acted pursuant to an expressly adopted official policy
9 and/or a longstanding practice or custom of defendants.

10 10.

11 Defendants' official policies, longstanding practices or customs caused
12 the deprivation of Mr. Pastrana's rights or were so closely related to the
13 deprivation of Mr. Pastrana's rights as to be the moving force that caused the
14 ultimate injury.

15 11.

16 Defendants had final policymaking authority concerning the above
17 unlawful acts.

18 12.

19 When Defendants engaged in these acts, they were acting as final
20 policymakers for Defendants.

21 13.

22 The acts of the individual defendants caused the deprivation of Mr.
23 Pastrana's rights or are so closely related to the deprivation of Mr. Pastrana's
24 rights as to be the moving force that caused the ultimate injury.

25 14.

26 Defendants training policies were not adequate to train its employees to
27 handle the usual and recurring situations with which they must deal.

28 15.

29 Defendants were deliberately indifferent to the obvious consequences of
30 the failure to train employees adequately.

1 16.

2 Defendants' failure to provide adequate training caused the deprivation
3 of Mr. Pastrana's rights or are so closely related to the deprivation of Mr.
4 Pastrana's rights as to be the moving force that caused the ultimate injury.

5 17.

6 Defendants conduct was a substantial factor in causing Mr. Pastrana's
7 injuries.

8 18.

9 Mr. Pastrana is entitled to compensation in an amount to be determined
10 at trial.

11 19.

12 Mr. Pastrana is entitled to his reasonable attorney fees, costs, and
13 disbursements under 42 U.S.C. §1988(b).

14 SECOND CLAIM FOR RELIEF

15 Negligence

16 20.

17 Mr. Pastrana realleges the above paragraphs as though fully set forth
18 herein.

19 21.

20 Defendants failed to exercise reasonable care to protect Mr. Pastrana
21 from harm through the acts or omissions as follows:

22 a. The defendants activated a spike strip mechanism on a white box truck
23 in an inappropriate location, leading to the vehicle losing control. As a
24 result, the out-of-control white box truck collided with Mr. Pastrana, who
25 was a pedestrian, in the unsafe area; or
26 b. Failed to engage in other maneuvers or mechanisms to protect Mr.
27 Pastrana from harm or prevent Mr. Pastrana from actively being placed
28 in harm through the acts or omissions of Defendants.

29 22.

30 As a direct and proximate result of Defendant's acts or omissions,
31 Plaintiff suffered injuries that include but are not limited to laceration to the

1 face, broken jaw, disfigured teeth, two screws on the inside of the mouth, metal
2 plate in the chin, radiculopathy on the left side of the body, broken middle
3 finger on the right hand. These injuries caused Plaintiff to suffer economic
4 damages in the form of medical bills, future medical expenses, and lost wages
5 in the amount of \$3,500,000.

6 23.

7 As a further direct and proximate result of Defendant's acts or omissions,
8 Plaintiff endured significant pain, mental suffering, emotional distress,
9 inconvenience, and interference with normal lifestyle activities in the amount of
10 \$2,500,000.

11 24.

12 Mr. Pastrana is entitled to his reasonable attorney fees, costs, and
13 disbursements under 42 U.S.C. §1988(b).

14 **Third Claim for relief**

15 *Negligent Infliction of Emotional Distress*

16 25.

17 Mr. Pastrana realleges the above paragraphs as though fully set forth
18 herein.

19 26.

20 Mr. Pastrana witnessed the serious physical injuries of his husband
21 John G. Irwin Jr.

22 27.

23 Mr. Pastrana perceived the serious physical injuries of his husband John
24 G. Irwin Jr as they occurred.

25 28.

26 As a result, Mr. Pastrana has suffered serious emotional distress,
27 including but not limited to post traumatic stress disorder.

28 29.

29 As a further direct and proximate result of Defendant's acts or omissions,
30 Plaintiff endured significant pain, mental suffering, emotional distress,
31 inconvenience, and interference with normal lifestyle activities in the amount of

1 \$2,500,000.

2 30.

3 Mr. Pastrana is entitled to his reasonable attorney fees, costs, and
4 disbursements under 42 U.S.C. §1988(b).

5 *****
6 Plaintiff prays for judgment against Defendant for damages as follows:

7 A) \$3,500,000 in economic damages.
8 B) \$2,500,000 in non-economic damages.
9 C) Costs and disbursements
10 D) Any other relief the Court deems just or proper.

11 February 15, 2024.

12 *s/ David Wallace, Esq.*
13 David Wallace, OSB #170783
14 Plaintiff's attorney
15 David@dtwallace.com
16 T: 503.896.6543
17
18
19
20

RECEIVED

APR 05 2024

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 Plaintiffs' Attorney

Office of the City Attorney

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

Jesus Velez Pastrana, and John G.

Case No.: 24CV08583

Irwin Jr.,

Plaintiffs,

v.

Summons

City of Portland, a municipal corporation, Joseph Gary Sumner, an individual, and John or Jane Doe, an individual,

Defendants.

1 To: City of Portland, ATTN: ROBERT L TAYLOR, PORTLAND CITY ATTORNEY,
 2 1221 SW 4TH AVE, STE 430, PORTLAND, OR 97204.

3
 4 You are required to appear and defend the Complaint filed against you in the
 5 above-entitled action within thirty (30) days from the date of service of this
 6 Summons upon you, and in case of your failure to do so, for want thereof, plaintiff
 7 will apply to the Court for the relief demanded in the Complaint.

8
 9 **NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY!**

10 You must "appear" in this case, or the other side will win automatically. To
 11 "appear" you must file with the court a legal document called a "motion" or
 12 "answer." The "motion" or "answer" must be given to the court clerk or
 13 administrator within 30 days along with the required filing fee. It must be in proper
 14 form and have proof of service on the plaintiff's attorney or, if the plaintiff does not
 15 have an attorney, proof of service on the plaintiff. If you have questions, you should
 16 see an attorney immediately. If you need help in finding an attorney, you may
 17 contact the Oregon State Bar's Lawyer Referral Service online at
 18 <http://www.oregonstatebar.org> or by calling (503) 684-3763 (in the Portland
 19 metropolitan area) or toll-free elsewhere in Oregon at (800) 452-7636.

20
 21 *David Wallace, Esq.*
 22 David Wallace, OSB# 170783
 23 Plaintiff's attorney
David@dtwallace.com
 24

4/3/2024 3:02 PM
24CV08583

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Plaintiffs' Attorney

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

Jesus Velez Pastrana, and John G.
Irwin Jr.,
Plaintiffs,
v.

City of Portland, a municipal
corporation, Joseph Gary Sumner, an
individual, and John or Jane Doe, an
individual,

Defendants.

Case No.: 24CV08583
First Amended Complaint
FOR NEGLIGENCE
JURY TRIAL DEMANDED
Prayer: \$69,000,000.00
ORS §21.160(1)(d) - \$1,176
NOT SUBJECT TO
MANDATORY ARBITRATION

1 Plaintiffs, Jesus Velez Pastrana ("Mr. Pastrana"), and John G. Irwin Jr. ("Mr.
2 Irwin") demand a jury trial and allege:

3 1.

4 City of Portland ("COP") is and at all times alleged herein a municipal
5 corporation in the State of Oregon.

6 2.

7 Notice of claims were properly provided to COP within 180 days of each
8 incident alleged herein.

9 3.

10 Joseph Gary Sumner is and at all times material alleged herein an
11 Oregon resident.

12 FIRST CLAIM FOR RELIEF:

13 *Battery*

14 4.

15 On April 29, 2022, Joseph Gary Sumner ("Sumner"), in Southeast
16 Portland, and upon information or belief, Sumner stole a box truck vehicle with
17 John or Jane Doe, and was fleeing from COPs when COPs set a spike strip to
18 the box truck vehicle that Sumner was driving, and thereafter Sumner

1 intentionally and/or recklessly caused harmful or offensive contact with Mr.
2 Pastrana and Mr. Irwin and did so cause harmful or offensive contact with Mr.
3 Pastrana and Mr. Irwin when Sumner struck Mr. Pastrana and Mr. Irwin with
4 the box truck that Sumner was driving while Mr. Pastrana and Mr. Irwin were
5 pedestrians.

SECOND CLAIM FOR RELIEF

Negligence

5.

9 Plaintiffs incorporate the above paragraphs as if fully set forth in this
10 claim for relief section.

6.

12 On April 29, 2022, COPs failed to exercise reasonable care to protect Mr.
13 Pastrana and Mr. Irwin from harm through the acts or omissions as follows:

- a. The COPs activated a spike strip mechanism on a white box truck in an inappropriate location, leading to the vehicle losing control. As a result, the out-of-control white box truck collided with Mr. Pastrana and Mr. Irwin, who were pedestrians; or
- b. Failed to engage in other maneuvers or mechanisms to protect Mr. Irwin and, Mr. Pastrana from harm or prevent Mr. Pastrana and Mr. Irwin from actively being placed in harm through the acts or omissions of COPs.

7.

COPs acts or omissions unreasonably created foreseeable risks of harm to Mr. Pastrana and Mr. Irwin.

8.

COPs acts or omissions were unreasonable in light of those risks.

9.

COPs acts or omissions were a substantial factor in causing harm to Mr. Pastrana and Mr. Irwin.

THIRD CLAIM FOR RELIEF

Negligent Infliction of Emotional Distress

10.

Plaintiffs incorporate the above paragraphs as if fully set forth in this claim for relief section.

11.

Mr. Pastrana witnessed the serious physical injuries of his husband Mr. Irwin as alleged below.

12.

Mr. Pastrana perceived the serious physical injuries of his husband Mr. Irwin as they occurred.

13.

As a result, Mr. Pastrana has suffered serious emotional distress, including but not limited to post traumatic stress disorder.

FORTH CLAIM FOR RELIEF

42 U.S.C. §1983

14.

Plaintiffs incorporate the above paragraphs as if fully set forth in this claim for relief section.

15.

COPs are state actors acting under color of law.

16.

COPs' conduct constituted an unjustified intrusion on Mr. Pastrana and Mr. Irwin's personal safety in violation of their substantive due process rights under the Fourteenth Amendment to the United States Constitution.

17.

The COPs affirmatively placed Mr. Pastrana and Mr. Irwin in a position of danger in which they would not have otherwise faced.

18.

30 The risk of harm to Mr. Pastrana and Mr. Irwin as alleged herein was
31 substantial, posing a serious risk of injury.

1 19.

2 Despite knowledge of the serious risks, the COPs made a conscious
3 choice to disregard the substantial risk of serious harm.

4 20.

5 The COPs acted with deliberate indifference to a known or obvious
6 danger in subjecting Mr. Pastrana and Mr. Irwin to such danger.

7 21.

8 The COPs acted pursuant to an expressly adopted official policy and/or a
9 longstanding practice or custom of COPs.

10 22.

11 COPs' official policies, longstanding practices or customs caused the
12 deprivation of Mr. Pastrana and Mr. Irwin rights or were so closely related to
13 the deprivation of Mr. Pastrana and Mr. Irwin's rights as to be the moving force
14 that caused the ultimate injury.

15 23.

16 COPs had final policymaking authority concerning the above unlawful
17 acts.

18 24.

19 When COPs engaged in these acts, they were acting as final policymakers
20 for COPs.

21 25.

22 The acts of the individual COPs caused the deprivation of Mr. Pastrana
23 and Mr. Irwin rights or are so closely related to the deprivation of Mr. Pastrana
24 and Mr. Irwin's rights as to be the moving force that caused the ultimate
25 injury.

26 26.

27 COPs training policies were not adequate to train its employees to handle
28 the usual and recurring situations with which they must deal.

29 27.

30 COPs were deliberately indifferent to the obvious consequences of the
31 failure to train employees adequately.

1 28.

2 COPs' failure to provide adequate training caused the deprivation of Mr.
3 Pastrana and Mr. Irwin rights or are so closely related to the deprivation of Mr.
4 Pastrana and Mr. Irwin rights as to be the moving force that caused the
5 ultimate injury.

6 29.

7 COPs conduct was a substantial factor in causing Mr. Pastrana and Mr.
8 Irwin injuries.

9 30.

10 Mr. Pastrana and Mr. Irwin is entitled to compensation in an amount to
11 be determined at trial.

12 31.

13 Mr. Pastrana and Mr. Irwin is entitled to his reasonable attorney fees,
14 costs, and disbursements under 42 U.S.C. §1988(b).

15 **Damages**

16 32.

17 Plaintiffs incorporate the above paragraphs as if fully set forth in this
18 section.

19 33.

20 As a direct and proximate result of Defendants acts or omissions, Mr.
21 Pastrana suffered injuries that include but are not limited to laceration to the
22 face, broken jaw, disfigured teeth, two screws on the inside of the mouth, metal
23 plate in the chin, radiculopathy on the left side of the body, broken middle
24 finger on the right hand. These injuries caused Plaintiff to suffer economic
25 damages in the form of medical bills, future medical expenses, and lost wages
26 in the amount of \$3,500,000.

27 34.

28 As a further direct and proximate result of Defendants acts or omissions,
29 Mr. Pastrana endured significant pain, mental suffering, emotional distress,
30 inconvenience, and interference with normal lifestyle activities in the amount of
31 \$22,500,000.

1 35.

2 As a direct and proximate result of Defendants acts or omissions, Mr.
3 Irwin suffered injuries that include but are not limited to diffuse axonal brain
4 injury, aphasia, broken legs, one broken arm (left), and other injuries more
5 specifically set forth in his medical records. These injuries caused Plaintiff to
6 suffer economic damages in the form of medical bills, future medical expenses,
7 and lost wages in the amount of \$20,500,000.

8 36.

9 As a further direct and proximate result of Defendants acts or omissions,
10 Mr. Irwin endured significant pain, mental suffering, emotional distress,
11 inconvenience, and interference with normal lifestyle activities in the amount of
12 \$22,500,000.

13
14 *****
15 Plaintiffs pray for judgment against Defendants for damages as follows:

16 A) \$24,000,000 in economic damages.
17 B) \$45,000,000 in non-economic damages.
18 C) Costs and disbursements
19 D) Any other relief the Court deems just or proper.

20 April 3, 2024.

21 *s/ David Wallace, Esq.*
22 David Wallace, OSB #170783
23 Plaintiffs' attorney
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29